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WISCONSIN COURT OF APPEALS
110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT I

March 4, 2016

To:

Hon. Jeffrey A. Wagner
Circuit Court Judge
Milwaukee County Courthouse
901 N. 9th St.
Milwaukee, WI 53233

John Barrett
Clerk of Circuit Court
Room 114
821 W. State Street
Milwaukee, WI 53233

Katherine Desmond Lloyd
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Karen A. Loebel
Asst. District Attorney
821 W. State St.
Milwaukee, WI 53233

Aaron R. O'Neil
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Leonard Collins, Sr. 85810A
Kettle Moraine Corr. Inst.
P.O. Box 282
Plymouth, WI 53073-0282

You are hereby notified that the Court has entered the following order:

2015AP750-CR State of Wisconsin v. Leonard Collins, Sr. (L.C. #1975CF5829)

Before Curley, P.J., Kessler and Brennan, JJ.

Leonard Collins, Sr., appeals a circuit court order denying his motion seeking sentence modification based on an alleged new factor.[1] Upon our review of the briefs and record, we

[1] A complete review of Collins's extensive litigation history is not necessary here. We provided a short synopsis of a portion of that history in ***State v. Collins***, No. 2007AP1769, unpublished slip op., ¶2 (WI App Oct. 15, 2008), where we described postconviction motions and appeals that Collins filed in 1977, 1978, 1979, 1984, 1989, 1993, 1994, 1997, 2000, and 2004. Subsequent to our 2008 decision, we denied Collins's petition for a supervisory writ from this court in ***State ex rel. Collins v. Dittman***, No. 2009AP2670-W, unpublished op. and order (WI App Dec 9, 2009), and we affirmed an order denying his request for a circuit court writ in ***State ex rel. Collins v. State***, No. 2010AP1559, unpublished slip op. (WI App Mar 29, 2011).

conclude at conference that this matter is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2013-14).[2] We summarily affirm the order.

Collins killed his mother-in-law in October 1975. A jury found him guilty of first-degree murder in 1976. Immediately after the jury returned its verdict, the trial court imposed the life sentence mandated by WIS. STAT. § 940.01 (1975-76).[3]

At the time of the crime in this case, WIS. STAT. § 57.06 (1975-76) provided that prisoners with life sentences were statutorily eligible for discretionary parole after serving twenty years in prison less a deduction for good conduct. *Cf.* ***Parker v. Percy***, 105 Wis. 2d 486, 489-92, 314 N.W.2d 166 (1981). Accordingly, as the submissions in this case reflect, Collins is currently eligible for discretionary parole. *Cf.* WIS. STAT. § 304.06(1)(b). In the instant litigation, Collins claims that a purported change in parole policy is a new factor allegedly preventing his discretionary release from prison and entitling him to sentence modification. The claim must fail.

A new factor is "'a fact or set of facts highly relevant to the imposition of sentence, but not known to the trial judge at the time of original sentencing, either because it was not then in existence or because ... it was unknowingly overlooked by all of the parties.'" ***State v. Harbor***,

[2] All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

[3] The Honorable Terrance T. Evans presided over the trial and imposed sentence in this matter. We refer to him as the trial court. The Honorable Jeffrey A. Wagner presided over the postconviction motion underlying this appeal. We refer to him as the circuit court.

2011 WI 28, ¶40, 333 Wis. 2d 53, 797 N.W.2d 828 (citation omitted). Whether a fact or set of facts constitutes a new factor is a question of law. ***Id.***, ¶33.

"In order for a change in parole policy to constitute a new factor, parole policy must have been a relevant factor in the original sentencing." ***State v. Franklin***, 148 Wis. 2d 1, 15, 434 N.W.2d 609 (1989). To determine whether parole policy was a relevant sentencing factor, we focus on the sentencing judge's express intent. *See* ***id.*** at 14. Accordingly, we must examine the actual words used by the trial court at sentencing.

The trial court here never discussed parole policy during the sentencing. Rather, the trial court observed that Collins's crime was tragic, then made only the following brief remarks:

> [i]t is a most serious crime. I anticipate that you will be incarcerated for a long period of time, and I would just hope that during the time that you are incarcerated you make some efforts to improve your position educationally and take advantage of anything that is offered to you in the institution. Sometime you will get out, and you are still a young man.
>
> It's the sentence of the court following the jury verdict here that the defendant be sentenced to a term of life imprisonment. The court will direct that the sentence commence as of 12:00 noon tomorrow.

Nothing in the foregoing comments allows a conclusion that the trial court relied on parole policy at sentencing. Collins appears to place importance on the statement that "sometime [Collins] will get out," but the court's mere reference to release from prison at some unspecified time far in the future does not demonstrate that parole policy was a relevant factor in imposing

the life sentence mandated by WIS. STAT. § 940.01 (1975-76).[4] The circuit court therefore correctly rejected Collins's new factor claim.

Collins includes a complaint in his current litigation that he has been denied parole as a consequence of the political agenda set by a former Wisconsin governor. As the circuit court also correctly determined, this complaint cannot be heard in the instant proceeding. A motion for sentence modification is not a legally cognizable way to challenge a parole decision. *Cf.* ***State v. Cramer***, 91 Wis. 2d 553, 558, 283 N.W.2d 625 (Ct. App. 1979), *aff'd*, 98 Wis. 2d 416, 296 N.W.2d 921 (1980) (refusal to grant discretionary parole reviewable only by *certiorari*).

Therefore,

IT IS ORDERED that the order of the circuit court is summarily affirmed. *See* WIS. STAT. RULE 809.21(1).

Diane M. Fremgen
Clerk of Court of Appeals

[4] Collins egregiously misrepresents the record when he asserts that the sentencing judge "stat[ed] that the defendant should be paroled back to society." We caution Collins that such misrepresentation violates the rules of appellate procedure and may lead to sanctions. *See* WIS. STAT. RULES 809.19(1)(d)-(e), 809.83(2). We do not countenance misleading remarks about the record from any litigant, *pro se* or otherwise.